



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

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Virginia Beach, VA 23462
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Robert G. Burnley
Director

Francis L. Daniel
Tidewater Regional Director
(757) 518-2000

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT

ISSUED TO
TCS MATERIALS, INC.
Newport News, VA Facility
Permit No. VA0087777
Hampton, VA Facility
Permit No. VA0087769

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d), between the State Water Control Board and TCS Materials, Inc., for resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "TCS" means TCS Materials, Inc., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. "Regulation" means 9 VAC 25-31-10 *et seq.* – Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.
9. "Hampton Permit" means VPDES Permit No. VA0087769.

10. “Newport News Permit” means VPDES Permit No. VA0087777.

SECTION C: Findings of Fact and Conclusions of Law

1. TCS owns and operates a concrete ready-mix plant in Hampton, VA and Newport News, VA. TCS – Hampton, VA (TCSH) is subject to the requirements of the Hampton Permit and TCS - Newport News, VA (TCSNN) is subject to the requirements of the Newport News Permit. The Hampton Permit became effective on October 13, 1998 and expired October 13, 2003. The Newport News Permit became effective on August 21, 1998 and expired August 21, 2003. The Hampton Permit authorized the discharge of treated wastewater to an unnamed tributary to Newmarket Creek. The Newport News Permit authorized the discharge of treated wastewater to an unnamed tributary to Jones Run. TCS applied for coverage under the General Permit for Ready-Mixed Concrete Plants for TCSH and TCSNN. TCSNN is currently operating under General VPDES Permit No. VAG110129. TCSH is currently operating under General VPDES Permit No. VAG110151.
2. Section 62.1-44.5 of the Code, 9 VAC 25-31-50 of the Regulation, and Part III.L of the Hampton and Newport News Permits require TCS to comply with all conditions of the Permits in order to legally discharge from the facilities.
3. Subject to certain conditions and limitations, Part I.A.1 of the Hampton Permit required TCSH to monitor discharges from truck washdown, the geothermal unit, and storm water from regulated industrial activities, at outfall 001, on a monthly basis for pH, total suspended solids, temperature, and total petroleum hydrocarbons. In addition, Part I.A.1 of the Permit established effluent limits for these parameters. The effluent limit for the average concentration of total suspended solids was 30mg/l.
4. On January 8, 2003, DEQ inspected TCSH and observed a discharge from the geothermal unit. During the inspection, DEQ informed TCSH that discharges from the geothermal unit needed to be sampled and that “No discharge” could not be reported on the facility's monthly Discharge Monitoring Report ("DMR") for January 2003. On February 10, 2003, DEQ received TCSH's January 2003 DMR, which stated that the facility had “No discharge” for the month.
5. TCSH exceeded the Hampton Permit's average concentration limit for total suspended solids for February, March, April, and June 2003. The reported values for total suspended solids for those months were 35mg/l, 35mg/l, 34mg/l, and 36mg/l, respectively.
6. On February 28, 2003, DEQ issued Notice of Violation No. W2003-02-T-0003 to TCSH for not sampling a discharge and incorrectly reporting “No discharge” on the January 2003 DMR.
7. Subject to certain conditions and limitations, Part I.A of the Newport News Permit required TCSNN to monitor discharges from truck washdown and storm water from regulated industrial activities, at outfall 001 on a monthly basis for pH, total suspended solids, and total petroleum hydrocarbons.
8. On June 9, 2003, DEQ inspected TCSNN and observed what appeared to be concrete fines in a swale located downstream from outfall 001. TCSNN has reported “No discharge” on its monthly DMRs since September 2001. A review of local rainfall data was performed and compared to months in which TCSNN sampled and reported

a discharge from the facility, versus those months in which “No discharge” was reported. It was determined that 23 out of the past 32 months (starting January 2001), in which TCSNN reported “No discharge”, had enough rainfall to create a discharge that could have been sampled.

9. On June 17, 2003, DEQ issued Notice of Violation No. W2003-06-T-0001 to TCSNN for the violations mentioned above.
10. In September 2001, TCSNN started recycling process wastewater, which eliminated all process wastewater discharges except under certain circumstances. During months in which a process wastewater discharge did not occur “No discharge” was reported on the monthly DMRs. TCSNN claims they were unaware that outfall 001 was comprised of both stormwater and process wastewater discharges until DEQ pointed it out during the June 9, 2003 inspection. TCSNN has complied with the sampling and reporting requirements of General VPDES Permit No. VAG110129.

SECTION D: Agreement and Order

By virtue of the authority granted it pursuant to Va. Code §62.1-44.15 (8a) and (8d), the Board orders TCS, and TCS agrees, to perform the actions described below and in Appendix A of this Order. In addition, the Board orders TCS, and TCS voluntarily agrees, to pay a civil charge of \$19,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall include TCS’s Federal ID number and shall note on its face that the payment is being made in accordance with the requirements of this Order. Payment shall be made by check, certified check, money order or cashier’s check payable to the “Treasurer of Virginia,” and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of TCS, for good cause shown by TCS, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notices of Violation issued on February 28, 2003 to TCSH and June 17, 2003, to TCSNN. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facilities as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, TCS admits the jurisdictional allegations, factual findings and conclusions of law contained here.
4. TCS consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. TCS declares it has received fair and due process under the Administrative Process Act, Va. Code §2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by TCS to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. TCS shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. TCS shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. TCS shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which TCS intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon its execution by both the Director or his designee and TCS. Notwithstanding the foregoing, TCS agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until TCS petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order. In addition, the Director or the Board may terminate this Order, for good cause upon 30 days' written notice to TCS. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve TCS from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, TCS voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of Sept. 1, 2004.

Francis L. Daniel

Francis L. Daniel, Tidewater Regional Director for
Robert G. Burnley, Director
Department of Environmental Quality

TCS voluntarily agrees to the issuance of this Order.

By: Daniel W. Joyner

Date: 6/29/04

Commonwealth of Virginia

City/County of Hampton/Newport News

The foregoing document was signed and acknowledged before me this 29 day of

June, 2004, by Daniel W. Joyner, who is
(Name)

President of TCS Materials, Inc., on behalf of the corporation.
(Title)

Patricia M. Chambers
Notary Public

My commission expires: 6/30/2008

APPENDIX A

TCS shall:

1. Comply with all permit requirements.
2. Evaluate current housekeeping and maintenance procedures for TCSH and TCSNN including the procedures for maintaining facility yards and sedimentation pits to ensure that the procedures are sufficient to ensure sustained permit compliance. By **April 1, 2004**, TCS shall submit to TRO certification that the current procedures are sufficient to ensure consistent compliance with permit effluent limits. Should TCS determine that additional procedures are necessary or desirable to ensure permit compliance, it shall submit those additional procedures to TRO for review and approval by **April 1, 2004**. TCS shall address any comments made by TRO on the procedures and include the new housekeeping and maintenance procedures into the SWP3s for TCSH and TCSNN by **April 8, 2004**.
3. All submittals and reports required by this Appendix A shall be mailed to:

Francis L. Daniel
Regional Director
DEQ, Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462